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In The
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-516

JAPE HOLLEY TAYLOR,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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Jape Holley Taylor petitions for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit and says:

OPINIONS BELOW

The opinions rendered in the Fifth Circuit are not yet officially reported. They appear in the records of the Fifth Circuit under the style, *United States of America*, Plaintiff-Appellee, vs. *Jape Holley Taylor*, Defendant-Appellant, No. 29198.

JURISDICTION

The opinion and judgment of the Fifth Circuit were filed on June 2, 1971. A timely petition for rehearing en banc was denied on August 10, 1971 with four dissents. Copies of the opinion, judgment and ruling on the petition for rehearing en banc are appended as Exhibits A, B and C, respectively. This Court's jurisdiction is invoked under 28 U.S.C. §1254.

STATUTE INVOLVED

Section 6(j) of the Military Selective Service Act of 1967 (50 App. U.S.C. 456(j)) provides in pertinent part:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the Armed Forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this sub-section, the term 'religious training and belief' does not include essentially political, sociological or philosophical views, or a merely personal moral code . . ."

POINT PRESENTED

THE MISLEADING NATURE OF THE SELECTIVE SERVICE'S CONSCIENTIOUS OBJECTOR APPLICATION FORM (FORM 150), TOGETHER WITH MISLEADING INFORMATION FROM THE CLERK OF THE LOCAL BOARD INVALIDATED TAYLOR'S SELECTIVE SERVICE SYSTEM PROCESSING.

STATEMENT OF CASE

Taylor was convicted in the Northern District of Florida for failure to submit to induction into the Armed Forces. He was sentenced to four years imprisonment.

Taylor is an undoubted conscientious objector. He was raised in a pacifist tradition. His father, Professor of Medicine and Chairman of the Division of Cardiology at the University of Florida Medical Center, is a pacifist. His maternal grandfather, a Congregationalist minister, was a World War I pacifist. A draft-age younger brother is seeking conscientious objector status. Although no express finding of fact was made, the trial judge indicated several times that he considered Taylor sincere, albeit misguided.

Upon graduation from high school, Taylor held a student deferment while a student for one year at the California Institute of Technology. He then accepted a computer programming position at the University of Florida Educational Center. At that point, his student deferment expired.

Taylor then made a timely request of his draft board for conscientious objector forms. He went to the draft board office and obtained the standard Form 150 prescribed for conscientious objectors. Prominently displayed on the front page of the Form 150 is the text of §6(j) of the Military Selective Service Act of 1967 (50 App. U.S.C. 456(j)), including the following:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the Armed Forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this sub-section, the term 'religious

> training and belief' does not include essentially political, sociological or philosophical views, or a merely personal moral code."

On the inside, the form asks various questions about the applicant's "religious training and belief", tending to confirm the initial impression that conventional religious training and belief is requred.

Nowhere does the form intimate that "religious training and belief" reaches personal, non-conventional beliefs as ruled by this Court in *United States v. Seeger*, 380 U.S. 163 (1965) and *Welsh v. United States*, 398 U.S. 333 (1970).

A copy of this form is appended as Exhibit D.

On reading the form at the draft board office, Taylor understood it to require a conventional religious basis. He asked the board clerk how literally the board would interpret the statute, and she told him that, ". . . that would be up to the board at that time." Taylor then told the clerk that he was not sure he could sign the application and she told him, ". . . there [were] some young men who couldn't sign it and some who went to jail."

Taylor took the Form 150 home to consider it. There he studied it with his father, and father and son together concluded that it applied only to conventional religious beliefs and that Taylor could not sign it because his objections, though conscientious, were not based on conventional religion.

Thereafter, the board clerk sent Taylor a letter, asking him to submit his completed Form 150 or withdraw his claim to be a conscientious objector. In reply, after issuance of an

induction order, Taylor sent the following letter:

> "Dear Sirs,
>
> It is my belief that war is wrong. Men must learn to get along with each other; they must not solve their differences by killing. I believe that the situation in the world today in which people are so afraid of each other that the military is the largest part of our government is wrong. However, my beliefs are not based upon any conventional religious upbringing, but upon my moral upbringing and personal observation and reading of people and society. Because of these beliefs, I requested conscientious objector status and was given Form 150, I believe, to fill out and sign. This form stated that one's moral beliefs and personal philosophy were not sufficient grounds for requesting Conscientious Objector status; only religious opposition was acceptable. For this reason, I was unable to complete and sign this form, which I believe discriminates against me. I was also unable to follow instructions to either return Form 150 or renounce my claim because I did not want to renounce my claim entirely. I am now scheduled for induction on May 16. I plan to refuse induction, but would gladly do an appropriate alternate duty. I am now in Boston on a job-related trip, and will return to Gainesville on May 18 to face whatever action is deemed appropriate.
>
> Sincerely,
>
> Jape Holley Taylor
> 8-17-49-400."

Taylor testified at trial to beliefs squarely within *Seeger* and *Welsh* (although Welsh had not then been decided). The trial judge ruled, however, that Congress had intended,

by deletion of all references to "Supreme Being" from the conscientious objector provisions of the 1967 Act, to repeal this Court's ruling in *Seeger*. Since Taylor was charged under the 1967 Act, the trial judge held that Taylor could not qualify for lack of any conventional religious basis.[1]

The Fifth Circuit did not pass upon, or even advert to, the trial court's interpretation of the 1967 amendment. Instead, the Fifth Circuit ruled that Taylor had "unilaterally decided on uncounseled, subjective information that he could not qualify" without making use of the "ready availability of information and advice at the local board," and that Taylor accordingly could not complain about being misled. A petition for rehearing en banc was denied with four judges dissenting (Chief Judge Brown and Judges Goldberg, Godbold and Simpson).

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[1]Both Seeger and Welsh were charged under the Universal Military Training and Service Act, 50 App. U.S.C. 456(j) (1958 Ed.)

ARGUMENT

The Fifth Circuit's Decision Presents an Important Question of National Consequence Involving the Effectuation of this Court's Decisions

The efficacy of this Court's rulings in *United States v. Seeger*, 380 U.S. 163 (1965) and *Welsh v. United States*, 398 U.S. 333 (1970) is seriously imperiled by the Selective Service System's Form 150. As pointed out by two of the dissenting Fifth Circuit judges, the form "at its best . . . is a half truth, and at worst . . . is clearly wrong." Most normal persons reading the form would draw an understanding contrary to the interpretation of the law by this Court.

The importance of the form in administration of the conscientious objector laws cannot be overstated. While the harmful effects of the form have recently been ameliorated by issuance of an explanatory brochure, the form continues to be the basic conscientious objector document and the foundation stone of conscientious objector claims. At the time of Taylor's processing, it was the only information normally provided potential conscientious objector applicants and, with the exception of the additionally misleading comments by the clerk, was the only information provided Taylor.

The phraseology of the form's questions is especially important. Even a non-conventional objector who realizes that he can claim conscientious objector status is required to frame his answers in terms of questions couched along lines deemed improperly restrictive by this Court.

That misleading actually occurs is clear. The majority of courts and draft boards who dealt with almost identical language for years prior to *Seeger* thought that conventional religion was required. See e.g. *Berman v. United States*,

156 F.2d 377 (9th Cir. 1946). The necessity for *Welsh* five years after this Court's definitive statement in *Seeger* shows the extent to which the old, restrictive interpretation persisted, doubtless fostered in large part by the misleading Form 150. This Court expressly commented in *Welsh* that, ". . . very few registrants are fully aware of the broad scope of the word 'religious' as used in §6(j) . . .". 398 U.S. at 341.

There is no way, of course, to know how many bona fide conscientious objector claims have been frustrated by the Form 150, either because a registrant was deterred from filing or was hampered in explanation of his views or because board members were caused to judge claims improperly. The problem has surfaced several times, however, in cases which have made their way to the upper levels of the appellate system. As this Court noted in both *Seeger* and *Welsh*, the registrants there understood the Form 150 to call for conventional religion and submitted it only after altering the form by striking words from it. Other cases involving the same problem are *United States v. Powers*, 413 F.2d 834 (1st Cir. 1969), cert. denied 396 U.S. 923 (1969); *United States v. Haseltine*, 415 F.2d 334 (9th Cir. 1969); and *United States v. Yoha*, ... F.2d ..... (9th Cir. 1971).

The problem is more acute because of the very sensitive First Amendment concerns intimately associated with, and perhaps inherent in, conscientious objection. Because of the inevitability with which criminal prosecution attends failure of a true conscientious objector to be properly classified, the absence of notice or discernible standard in the form operates together with the misleading to present a most serious problem in a most sensitive area.

Arguably, the incredible failure of the Selective Service System at the time of Taylor's processing to provide any

explanatory material was also a violation of due process, in view of the strict rules of waiver imposed on a registrant who fails to assert timely and sufficient classification claims. Compare, for example, the elaborate informational program apparently considered necessary by the Internal Revenue Service.

The Selective Service System cannot be counted on to rectify the harm caused by noncompliance with *Seeger* and *Welsh*. For two and one-half years after *Seeger*, the Selective Service System continued to dispense a Form 150 even more violative of the *Seeger* doctrine than the instant one. This was probably explained by the open opposition to *Seeger* by the Selective Service System during Congressional hearings in connection with the 1967 Act.[2] This attitude also probably explains the unresponsiveness to *Seeger* of the current form, which was adopted to conform to the 1967 Act. Despite a change in Selective Service administration, the current misleading form continues in use sixteen months after rendition of *Welsh*.

Even if the Selective Service System agreed to correct the current Form 150 immediately without action by this Court, the number of persons like Taylor still being subjected to injustice because of past and present use of the form would still merit this Court's attention.

The Standard of Conduct Imposed on Taylor by the Fifth Circuit Conflicts with Decisions in Other Circuits on an Important Matter of Federal Law

An important question is also presented by the standard of conduct imposed upon Taylor by the Fifth Circuit.

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[2]House Report No. 267 (Armed Services Committee), 91st Congress, 1st Session (1967).

Selective Service misinformation to registrants is an ongoing problem which has in recent years resulted in a growing body of Circuit level opinions. *United States v. Lowell*, 437 F.2d 906 (1971); *United States v. Wroblewski*, 432 F.2d 423 (9th Cir. 1970); *United States v. Burns*, 431 F.2d 1070 (10th Cir. 1970); *United States v. Lansing*, 424 F.2d 225 (9th Cir. 1970); *United States v. Williams*, 420 F.2d 288 (10th Cir. 1970). See also *United States v. Bagley*, 436 F.2d 55 (5th Cir. 1970) and *Powers v. Powers*, 400 F.2d 438 (5th Cir. 1968). The general rule of these cases is that Selective Service misinformation which frustrates the assertion of important claims by registrants invalidates the classification process.

Those cases are undercut by the ruling here that a registrant, who is in fact misled by official information having a clear capacity for misinforming the normal person, may, nonetheless, not complain because of the availability of other information from which he could have searched out the real rule. In effect, the Fifth Circuit says that a registrant may not take apparently adverse information from his draft board at face value, but must check it to be sure that his board is not misleading him.

The Fifth Circuit's approach is inconsistent with the paternal, nonadversarial premise central to the Selective Service System's rules and procedures. Nor does it take into proper account the age, inexperience and unsophisticatedness of the Selective Service System's registrants.

The conclusion of the Fifth Circuit that Taylor acted unreasonably is entirely unrealistic. Taylor could hardly have acted more reasonably. At the proper time he went to his board to take the proper steps required of him. He obtained the only explanatory material provided by his presumptively friendly government. He asked reasonable questions of the

board's clerk, the only visible representative and spokesman for the board. He received only cryptic, discouraging replies, with no suggestion that he might find better information elsewhere in the System. Taylor then went home and conferred with his father. Father and son together drew the same meaning from the language of the form that courts and draft boards had drawn both before and after *Seeger* - in fact, the same interpretation ultimately drawn by Taylor's trial court. The statement of the board clerk that other boys were not able to sign the form and had to go to jail tended only to buttress the apparent conventional religious test of the form.

The Fifth Circuit's survey of the "ready availability" of information from the Selective Service System is equally unrealistic. The Fifth Circuit points out that Taylor's notice of classification plainly advised him "FOR INFORMATION AND ADVICE, GO TO ANY LOCAL BOARD." That is what Taylor did. When he got there, he asked questions of the person in charge and relied on the information he got. As pointed out by the Report of the National Advisory Commission on Selective Service (Marshall Commission), registrants commonly assume that information from board clerks is authoritative. The Commission observed:

> "The 'anonymity' of the Boards is perhaps one reason for this impression; even more likely, however, is the method of board operation. Many board members have heavy professional and business duties. They usually meet in the evening to make their classification decisions. A registrant seeking information by phone or in person would no doubt find the clerk the only person on hand. The more efficient she is, the more authoritative her answers may appear to the

registrant. The assumption which results is understandable, but misleading."

In Pursuit of Equity: Who Serves When Not All Serve? Report of the National Advisory Commission on Selective Service (Marshall Commission), U. S. Government Printing Office (1967), Page 21.

The Fifth Circuit points out that government appeal agents are theoretically available for registrants. The National Advisory Commission on Selective Service found, however, with regard to government appeal agents, that:

"They are also the most elusive components of the entire system. The research team which reported the results of intensive one-state study told the Commission, 'The clear fact is . . . that appeal agents are almost totally inactive. Most board members barely know who their appeal agent is and cannot recall when he was last in the office. Clerks freely admit that their appeal agents have checked no files, seen no registrants, made no appeals in years. What advising of registrants there is, must be done by clerks or by occasional private attorneys. Most registrants are probably quite unaware that there are appeal agents in the system.' The Commission, on the evidence presented to it, shares that doubt. The condition appears to be uniform throughout the System - indeed, perhaps, it is the most uniform characteristic."

In Pursuit of Equity: Who Serves When Not All Serve? Report of the National Advisory Commission on Selective Service (Marshall Commission), U. S. Government Printing Office (1967), Pages 28-29.

As noted by the Fifth Circuit, the Selective Service regu-

lations do provide that board members shall "advise and assist registrants" and that the System has a "positive information policy." But the Selective Service System does not affirmatively communicate this information to registrants. The only way a registrant can find this out is to research the regulations, if he can find a copy, and only a rare young man could be expected to do that. Even if he found these declarations of policy, they would do him little good since the Selective Service System has done little to implement them.

The regulations also provide that the draft boards may appoint advisers for registrants, whose names shall be posted at the board office. 32 C.F.R. 1604.41. Taylor's clerk said that his board did have an adviser; but that she did not know who he was, and his name was not posted.

The Fifth Circuit suggests that Taylor could have obtained advisory information from the board itself. This is inaccurate. When Taylor asked the clerk what interpretation the board might give the religious requirement, the clerk told him ". . . that that would be up to the board at that time.", meaning that Taylor would find out when the board either approved or rejected his application. There is no procedure by which a registrant can address questions to his board and obtain advisory information.

The Fifth Circuit's decision resulted in injustice for Taylor and will result in the same for other people if not overturned. This Court has never spoken on the problem either of misinformation by the Selective Service System or omission of necessary information by the Selective Service System. This Court's attention is now badly needed to provide guidance in this area of growing concern.

CONCLUSION

Taylor's conviction should be vacated, and his case should be remanded to the Selective Service System so that he can have an opportunity to file a conscientious objector's claim for consideration by his local board.

Respectfully submitted,

By .....

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CERTIFICATE OF SERVICE

I DO CERTIFY that a copy hereof was furnished to the Solicitor General, Justice Department, Washington, D. C., and to the United States Attorney for the Northern District of Florida, Tallahassee, Florida.

.....

ATTORNEY